

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Order Instituting Rulemaking on the Commission's own motion to improve distribution level interconnection rules and regulations for certain classes of electric generators and electric storage resources.

Rulemaking 11-09-011
(Filed September 22, 2011)

**THE OFFICE OF RATEPAYER ADVOCATES' REPLY TO
COMMENTS ON THE MOTION AND SUPPLEMENT TO THE MOTION OF
SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E), SAN DIEGO GAS &
ELECTRIC COMPANY (U 902-E), AND PACIFIC GAS AND ELECTRIC
COMPANY (U 39-E) PROPOSING RULE 21 TARIFF LANGUAGE
IMPLEMENTING JOINT COST CERTAINTY PROPOSAL**

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Pursuant to Rule 11.1 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission) and the Administrative Law Judge's e-mails of May 18 and 21, 2015, the Office of Ratepayer Advocates (ORA) submits its reply to the *Comments on Motion and Supplement to the Motion of Southern California Edison Company (U 338-E), San Diego Gas & Electric Company (U 902-E), and Pacific Gas and Electric Company (U 39-E) Proposing Rule 21 Tariff language Implementing Joint Cost Certainty Proposal* filed on May 22, 2015.

I. BACKGROUND

On January 13, 2013, Southern California Edison Company, San Diego Gas & Electric Company and Pacific Gas and Electric Company (IOUs) filed a Joint Cost Certainty Proposal¹ to interconnect applicants' energy resources to their distribution grid at a fixed price.

¹ *Joint Cost Certainty Proposal of Pacific Gas and Electric Company (U 39 E), Southern California Edison Company (U 338 E) and San Diego Gas & Electric Company (U 902 E)*, dated January 18, 2013. Filed in R.11-09-011.

On July 29, 2014, Administrative Law Judge (ALJ) Bushey issued a Ruling,² and directed parties to file comments on the CPUC Energy Division's (ED) *Cost Certainty for the Interconnection Process Staff Proposal* (Staff Proposal) by September 12, 2014. The Staff Proposal recommended adopting two cost certainty models: (1) an interconnection process based on the utilities' 2013 recommendations with some modifications for projects that pass the Fast Track Interconnection Review Process,³ and (2) an interconnection process based on the Massachusetts model⁴ with modifications for any project that does not pass the Fast Track Interconnection Review Process. ORA filed its comments on the Staff Proposal on September 12, 2014 noting that "any cost certainty approach that is adopted by the Commission must not result in costs shifting from the utility and/or the applicant to ratepayers."⁵

On December 4, 2014, various stakeholders participated in a Cost Certainty workshop facilitated by the Energy Division. The workshop addressed the Staff Proposal on Cost Certainty, as well as alternative cost certainty proposals by other stakeholders.⁶

On January 7, 2015, ALJ Bushey issued an email ruling directing the IOUs to file and serve a motion by March 31, 2015 with proposed revisions to Electric Tariff Rule 21 to address cost certainty. On April 1, 2015,⁷ the IOUs filed their Joint Cost Certainty Proposal for a fixed cost option (Fixed Price Option Estimate) for projects that meet the criteria for the Fast Track interconnection process or the Independent Study Review Process.⁸ The IOUs propose that any

² *Administrative Law Judge's Ruling Setting Schedule for Comments on Staff Reports and Scheduling Prehearing Conference*, Issued July 29, 2014 (Ruling).

³ The Fast Track Interconnection Review Process is a streamlined review process for which net energy metering, non-export, and some exporting facilities are eligible.

⁴ In the Massachusetts model, the utilities provide an interconnecting cost estimate to interconnecting applicants. The applicants are not held responsible for grid upgrade costs exceeding the estimate by more than 10%.

⁵ *Comments of the Office of Ratepayer Advocates to Administrative Law Judge's Ruling Setting Schedule for Comments on Staff Reports and Scheduling Prehearing Conference*, dated September 12, 2014. Filed in R.11-09-011.

⁶ Presenters included the IOUs, Interstate Renewable Energy Council, PowerTree, Stem and SolarCity.

⁷ The Commission offices were closed on March 31, 2015. Therefore pursuant to Rule 1.15 of the CPUC Rules of Practice & Procedure, the IOUs' motion was timely filed on April 1, 2015.

⁸ *Motion of Southern California Edison Company (U 338-E), San Diego Gas & Electric Company (U 902-E), and Pacific Gas and Electric Company (U 39-E) Proposing Rule 21 Tariff language Implementing Joint Cost Certainty Proposal* (Joint Cost Certainty Proposal) filed on April 1, 2015.

difference between the estimated and actual interconnection cost be trued-up in customer rates in their General Rate Case (GRC) proceedings as capital work order process.

On April 16, 2015 the ALJ issued a ruling directing the IOUs to provide additional information on the GRC aspect of the IOU Cost Certainty proposal; to describe “how project interconnection costs that are not recovered or over-collected from project applicants would be treated for purposes of a utility’s plant-in-service and regulated rate base;” explain the IOUs’ “justification for including any such costs in regulated revenue requirement, and particularly address the incentives created by their ratemaking proposal;” and to explain how their proposal “would impact customer rates.”⁹ On May 8, 2015 the IOUs filed a Supplement to the Joint Cost Certainty Proposal.¹⁰

On May 22, 2015 parties filed comments to the IOUs’ Joint Cost Certainty proposal and to the Supplement to the Joint Cost Certainty Proposal. Parties who filed comments included the Bioenergy Association of California (BAC), Placer County Air Pollution Control District (PCAPCD), SolarCity Corporation (SolarCity), California Solar Energy Industries Association (CALSEIA), NRB Energy, Inc. (NRG), California Energy Storage Alliance (CESA), Clean Coalition, and the Interstate Renewable Energy Council (IREC).

II. SUMMARY OF THE IOU JOINT COST CERTAINTY PROPOSAL

The IOUs’ proposed Fixed Price Option Estimate will be available to projects that:

- 1) Pass the Fast Track Interconnection Review Process; do not require substation upgrades (with the exception of upgrades to metering); and whose total estimated cost of the required upgrades to the distribution system is less than \$500,000; OR
- 2) Qualify for the Independent Study Review Process; are 5 MW or less; do not trigger distribution network upgrades; do not require substation upgrades (with the exception of upgrades to metering); are not dependent on facilities triggered by earlier-queued projects; and whose total estimated cost of required upgrades to the distribution system is less than \$500,000.¹¹

⁹ *Administrative Law Judge’s Ruling Setting Schedule for Supplement to Utility Cost Certainty Proposal and Comments in R.11-09-011, April 16, 2015.*

¹⁰ *Supplement To The Motion of Southern California Edison Company, San Diego Gas & Electric Company and Pacific Gas and Electric Company Proposing Rule 21 Tariff Language Implementing Joint Cost Certainty Proposal* filed on May 8, 2015. The April 16, 2015 Ruling directed the IOUs to file the additional information on May 1, 2015, but on April 28, 2015 the ALJ granted the IOUs a one week extension setting the due date to May 8, 2015.

¹¹ *Joint Cost Certainty Proposal* filed April 1, 2015.

The Fixed Price Option Estimate for the project is prepared by the IOUs and will include a description of the interconnection facilities and distribution upgrades and the related estimated fixed cost, not subject to a subsequent true-up of the actual costs. The Fixed Price Option Estimate will also include a description of any cost elements not included in the estimated fixed cost. The excluded cost elements are for environmental studies, environmental mitigation, permits, or easements related to the construction and installation of the interconnection facilities and distribution upgrades. The IOUs propose to exclude these costs because of the unpredictability and potential magnitude of these costs. The Applicant will be responsible for the actual cost of any identified cost elements not offered on a fixed price basis. The Applicant is only responsible for the Fixed Price Estimate; any difference between the Fixed Price Estimate and the actual interconnection cost is passed onto ratepayers.

The IOUs do not support applying the cost certainty option for projects that trigger significant distribution network upgrades, but would like to continue discussions within the Rule 21 proceeding and conduct more analysis regarding cost certainty after more data is collected. Thus, the IOUs are recommending establishing a “Phase 2” in this proceeding regarding cost certainty.

III. DISCUSSION

A. The Massachusetts Model Is The Best Option Available To The Commission To Appropriately Allocate Costs For Interconnection To The Distribution System.

Numerous parties continue to endorse and prefer the Massachusetts Model. BAC and PCAPCD support the Staff Proposal’s recommendation to include the Massachusetts Standards for Interconnecting Distributed Generation within the Rule 21 framework.¹² IREC “suggest[s] that a more broadly applicable approach, such as the Massachusetts-based cost envelope, would be appropriate here.”¹³ Clean Coalition recommends a revised cost envelope and opposes the

¹² *Comments of the Bioenergy Association of California and the Placer County Air Pollution Control District on the Utilities’ Proposal for Interconnection Cost Certainty*, filed May 22, 2015. p. 8.

¹³ *Comments of the Interstate Renewable Energy Council, Inc. on the Joint Motion of Southern California Edison Company (U 338-E), San Diego Gas & Electric Company (U 902-E) and Pacific Gas and Electric Company (U 39-E) Proposing Rule 21 Tariff Language Implementing Joint Cost Certainty Proposal*, filed May 22, 2015. p. 2.

Fixed Price Option proposed by the utilities.¹⁴ CESA supports the adoption of a modified “cost envelope” approach as proposed by Clean Coalition.¹⁵

ORA supports the Massachusetts model. Under the Massachusetts cost envelope model, cost increases of up to 10% of the estimated cost are paid by Applicants. Any cost increases in excess of the 10% cap are paid by the utility shareholders. Ratepayers do not assume any risk. On the other hand, if the actual cost is less than the estimated cost, the overage is refunded to the Applicant. The Massachusetts cost envelope model serves to better protect ratepayers by keeping any interconnection cost overruns shared between the applicant (the entity creating the cost) and the IOUs (the entities responsible for the cost estimate).¹⁶ It also protects Applicants from excessive increases in costs charged by the IOUs, while also providing an incentive for the IOUs to provide accurate cost estimates since the shareholders are responsible for any costs incurred above the 10% cap. The Massachusetts model could be applied to the category of projects listed in the IOUs’ motion on a trial basis.¹⁷ The 10% “cost envelope” could be re-evaluated and adjusted if necessary one year after implementation to ensure that the Applicants and the IOUs’ shareholders are not overburdened with under- or over-collections of interconnection costs.

ORA agrees with Clean Coalition that a “cost envelope will result in the applicant paying the actual costs...to the extent that actual costs lie within the envelope range of the utility estimate.” Clean Coalition has proposed modifications and clarifications to the Massachusetts model and labeled it Revised Cost Envelope Option (Revised CEO). In the Revised CEO model the Applicant would choose to have either a 10% or 25% CEO. The Applicant would only be

¹⁴ *Clean Coalition Comments on Joint Motions of Southern California Edison Company, San Diego Gas & Electric Company, and Pacific Gas and Electric Company on Language Implementing Joint Cost Certainty Proposal and Revisions to Streamline Rule 21 for Behind-The-Meter Non-Exporting Storage Devices*, filed May 22, 2015.

¹⁵ *Response of the California Energy Storage Alliance to Joint Motions of Southern California Edison Company, San Diego Gas & Electric Company, and Pacific Gas and Electric Company on Language Implementing Joint Cost Certainty Proposal and Revisions to Streamline Rule 21 for Behind-The-Meter Non-Exporting Storage Devices*, filed May 22, 2015. p. 3.

¹⁶ This in line with ORA’s position that any cost certainty approach for interconnection adopted by the Commission must not result in costs shifting from the utility and/or the applicant to ratepayers.

¹⁷ Fast track projects and qualifying Independent Study Process projects.

responsible for interconnection costs up to 10% or 25% of the IOU estimated interconnection cost. The Revised CEO model

shift[s] the risk of any amount over the 10-25% envelope limit into a balancing account rather than imposing shareholder liability...and adding, as a backstop, ratepayer liability for any long-term overdraw of the balancing account.¹⁸

The Clean Coalition notes that “less than 1% of projects’ actual costs exceeded estimates by more than 20%,”¹⁹ and “the risk of significant cost shifting to ratepayers appears minimal based on the utility record regarding interconnections costs.”²⁰ Thus, a cost envelope model such as the Massachusetts model could protect ratepayers as

available data suggest that there is a significant utility tendency toward providing estimates that are higher than actual costs [and given] this data it is likely that ratepayers will not be liable for interconnection costs frequently or perhaps ever because of accumulated payments [in the balancing account] higher than actual costs.²¹

However, the Revised CEO does not provide the same level of protection as the Massachusetts model as it still transfers cost responsibility away from the applicant onto ratepayers. Thus, while the 10% or 25% CEO is an improvement to the IOU’s Fixed Cost Option because the Applicant would be responsible for cost overages up to those amounts thereby lowering ratepayer risk, it still goes against the fundamental principle of cost causation that the entity that triggers the cost should be responsible for paying for the cost. The Revised CEO also shifts cost uncertainty from the applicant and the utility to ratepayers. The Clean Coalition proposed cost envelope does not provide protection to ratepayers from excessive under-collections by the IOUs from Applicants; it does not guarantee a limit in excessive under-collections from the Applicant and thus places the burden of uncertain and unknown costs on ratepayers; and it does not guarantee that cost estimates will continue to be higher than actual costs if the IOUs are not held accountable for some of the overages. The Clean Coalition

¹⁸ Clean Coalition, p. 8.

¹⁹ Clean Coalition, p. 9.

²⁰ Clean Coalition, p. 13.

²¹ Clean Coalition, p. 17.

proposed Revised CEO should be rejected it because it places cost liabilities on ratepayers from IOUs' inaccurate cost estimates.

B. The IOUs Proposal to Shift Excess Costs to Ratepayers Should be Rejected.

ORA agrees with BAC and PCAPCD that:

in the rare case actual costs do end up above or below the range provided by the cost envelope, it should be the responsibility of the utility to make up the difference, either by refunding excess charges to the project developer or by paying any charges that exceed the cost envelope. Although a cost balancing account could also be established for over- and under-charges, a cost balancing account will not encourage the utilities to provide more accurate cost estimates.²²

A balancing account will not incent the IOUs' to provide accurate project cost estimates or be accountable for inaccurate estimates. Under the IOUs' Joint Cost Certainty Proposal, if the IOUs underestimate the interconnection cost, ratepayers pay the difference between the actual and estimated costs. If IOUs overestimate the interconnection cost, the Applicants pays for more than the actual costs. In either scenario, there is no risk to the IOUs for inaccurate cost estimates. The IOUs' Joint Cost Certainty Proposal does little to advance the Commission's goals in this proceeding of ensuring certainty in interconnection costs,²³ therefore the IOUs' Joint Cost Certainty Proposal should be rejected. The IOUs should be required to provide reasonable estimates of interconnection cost without using ratepayers and/or Applicants as "backstops" for their inaccurate estimates. The IOUs' Joint Cost Certainty Proposal provides incentives to the IOUs to under-estimate or over-estimate interconnection costs at ratepayer and/or Applicant expense without penalties.

C. Cost Recovery

NRG states that "the IOUs could recover the costs not recovered from the interconnection customer through whatever mechanism would have allowed the IOUs to recover costs above the fixed price in the IOUs' proposal."²⁴ Clean Coalition recommends "that a balancing account be

²² *Comments of the Bioenergy Association of California and the Placer County Air Pollution Control District on the Utilities' Proposal for Interconnection Cost Certainty*, filed May 22, 2015. p. 10.

²³ *See, e.g., Ruling*, Attachment A, Cost Certainty for the Interconnection Process Staff Report, p. 5.

²⁴ *NRG Energy, Inc. Comments on Joint Motion Regarding Interconnection Cost Certainty*, filed May 22, 2015. p. 4.

created by each utility that will cover costs in excess of the 10% cost envelope incurred by projects after signing of the GIA [Generator Interconnection Agreement]. In order to ensure that the balancing account remains solvent over time, any overcharge should be trued up every three years in each IOU's General Rate Case, as the IOUs describe in their Supplemental Filing."²⁵ The NRG and Clean Coalition proposals both assume that the IOUs' cost overruns are just and reasonable. However, there is no proposed mechanism in the IOUs' Joint Cost Certainty Proposal for the Commission to determine that the cost overruns are just and reasonable.²⁶

The Supplement to the Joint Utilities' Cost Certainty Proposal improperly implies that utilities are always guaranteed a rate of return on their investments.²⁷ This is simply not true. Utilities may be permitted recovery if they show that the costs incurred are justified.²⁸ There is no such showing in the Joint Utilities' Cost Certainty Proposal, and their arguments to "true-up" the difference between actual and recovered costs in future GRCs is fundamentally flawed and presumptuous.

The Joint Utilities' Cost Certainty Proposal and the Clean Coalition CEO proposal will shift the IOUs' revenue shortfall resulting from their inaccurate cost estimates to ratepayers, which, under the current ratemaking principles, is the responsibility of the generators.²⁹ No rationale is provided to explain why this cost shift is reasonable. Without a commensurate

²⁵ *Clean Coalition Comments on Joint Motions of Southern California Edison Company, San Diego Gas & Electric Company, and Pacific Gas and Electric Company on Language Implementing Joint Cost Certainty Proposal and Revisions to Streamline Rule 21 for Behind-The-Meter Non-Exporting Storage Devices*, filed May 22, 2015, p. 13.

²⁶ Cal. Pub. Util. Code § 451. *See also*, *Ponderosa Telephone Co. v. Public Utilities Commission*, 197 Cal.App.4th 48 at p. 62, *citing*, *Public Utilities Commission of State of Cal. v. F.E.R.C.*, 894 F.2d 1372 at pp. 1383-1384. (the "rule against such revision operates sometimes to protect customers from surcharges and at others to protect gas companies from refunds; its equity lies in its steady application regardless of what party is seeking to reexamine the past."). The proposal that differences can be trued-up in a General Rate Case ignores that costs are never "trued-up" in General Rate Cases. "True-ups" is a concept used in balancing account proceedings, not General Rate Case proceedings.

²⁷ *Supplement to the Joint Cost Certainty Proposal* at pp. 2-5.

²⁸ Cal. Const., art. XII, § 3, Cal.Pub.Util. Code §§ 451, 454(a).

²⁹ Rule 21, §§ F.2, F.3.

benefit to ratepayers, it is unreasonable to allow such a shift of costs to ratepayers.³⁰ These proposals are not consistent with fundamental ratemaking principles that avoid cross-subsidies between customer classes.³¹ The Commission has consistently ensured that the entity that creates cost pays those costs. The Commission has said that to protect utility ratepayers from unreasonable rates it will allocate costs to the customer causing them.³² The Commission should not deviate from this fundamental principle now and should reject the Joint Utilities' Cost Certainty Proposal and the Clean Coalition Revised CEO proposal to shift costs to ratepayers.

IV. CONCLUSION

The ORA recommends that the Commission:

- Adopt the Massachusetts model for Cost Certainty of Interconnection of Distributed Resources; and
- Reject the Joint Utilities' Cost Certainty Proposal and the Clean Coalition Revised CEO proposal to shift interconnection costs to ratepayers.

Respectfully submitted,

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³⁰ Clean Coalition attempts to provide an example for ratepayer benefits stating if “the resulting accelerated development and reduced risk allows the offered/accepted cost of energy to be just 0.1¢/kWh lower, ratepayers would save \$32,000 over a 20 year contract for each MW, enough to offset a \$300,000 unanticipated deficit on every 10MW of new capacity (assuming 1600 MWh/MW capacity per year for 20 years = 32,000 MWh).” However, there are no facts in evidence to support its assumption that the cost of energy will be lower, and thus the example cannot be relied upon to justify a rate increase to ratepayers.

³¹ Cal.Pub.Util. Code §§ 453, 454.8. *See also*, D.12-12-033, Decision Adopting Cap-and-Trade Greenhouse Gas Allowance Revenue Allocation Methodology for the Investor-Owned Electric Utilities in Rulemaking 11-03-012, *Order Instituting Rulemaking to Address Utility Cost and Revenue Issues Associated with Greenhouse Gas Emissions*, December 20, 2012.

³² *See, e.g.*, D.05-08-013, Interim Opinion Adopting Changes in Interconnection Rules for Distributed Generation *Order Instituting Rulemaking Regarding Policies, Procedures and Incentives for Distributed Generation and Distributed Energy Resources* in Rulemaking 04-03-017, August 25, 2005.